



Appeal Decision

Site visit made on 23 November 2020

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 November 2020

Appeal Ref: APP/C1950/W/20/3257901

Highways Land on Bessemer Road, Haldens, Welwyn Garden City AL7 1ET

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning approval required under Schedule 2, Part 16, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by MBNL (EE & H3G) against the decision of Welwyn Hatfield Borough Council.
 - The application Ref 6/2019/2955/FULL, dated 22 November 2019, was refused by notice dated 6 April 2020.
 - The development proposed is the replacement of an existing 15.0m monopole with a 20.0m high monopole supporting 12 no. antenna apertures together with the installation of ground-based equipment cabinets and ancillary development thereto.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues raised by this appeal are: -
 - a) Whether the proposed development has been supported by the necessary evidence to justify the proposal;
 - b) The effect of the proposed development on the character and appearance of the area;
 - c) The effect of the proposed development on the living conditions of future adjoining occupiers; and
 - d) The need to site the installation in the location proposed having regard to the potential availability of alternative sites.

Reasons

Evidence

3. Paragraph 115 Part a) of the National Planning Policy Framework (the Framework) requires the outcome of consultations with organisations with an interest in the proposed development, in particular where a mast is to be installed near a school or college, to justify the proposed development. Policy R21 Criterion (v) of the Welwyn Hatfield District Plan (the District Plan) 2005 requires all applications and determinations received for mobile phone masts,

base stations and transmitters proposed near college, school, nursery or pre-school playgroup locations to include details of consultation. This criterion is in line with the requirements of the Framework.

4. The appellant has referred me to Appendix C of The Code of Best Practice 2016 which sets out factors that should be taken into account by operators and local planning authorities in determining whether a school or college should be consulted. Upon assessment the appellant has indicated that the proposal did not meet any of the criteria for pre-consultation and, as such, pre-application consultation was not undertaken. The Code of Best Practice is however a voluntary code and not planning policy. I, therefore, attribute lesser weight to the requirements set out within The Code of Best Practice than that of Paragraph 115 Part a) of the Framework and Policy R21 Criterion (v) of the District Plan.
5. The Council has highlighted that there is a nursery approximately 100 metres from the appeal site. The appellant's Appeal Statement illustrates that there are two primary schools and a mixed infant and nursery school less than a kilometre from the appeal site. In the context of Paragraph 115 Part a) of the Framework and Policy R21 Criterion (v) of the District Plan I consider the proposed telecommunication installation would be installed near these schools and that these organisations could have an interest in the proposed development. The appellant has indicated that pre-application consultation was not undertaken, therefore, the proposal has not been supported by the necessary evidence to justify the proposed development. As such, the proposal has failed to satisfy the requirements of Paragraph 115 Part a) of the Framework and Policy R21 Criterion (v) of the District Plan.

Character and appearance

6. The proposed development would be sited on the opposite side of the road to that of the existing installation that it would replace. The appeal site forms part of an open grass verge next to the highway. The appeal site is situated at a high part of the land topography along Bessemer Road and where there is a curving bend in the highway. However, there is an existing mast installation with associated cabinets a short distance from the appeal site at the bend along the same side of the highway that is prominent and clearly visible to passers-by. There is other telecommunications infrastructure on the opposite side of the highway. These installations are established and form part of the character and appearance of the area.
7. The mast proposed would be a tall structure, but it would be relatively slimline in appearance, albeit not as slim as those other mast poles within the vicinity. In addition to the mast, there would be four ground-based structures comprising cabinets. I observed that the other existing masts in the area also host cabinets, although not as many as proposed in this case.
8. The proposal would be a visually prominent installation upon the grass verge, similarly to the existing mast a short distance from the appeal site on the same side of the highway. The installation would be clearly visible in the public realm. However, despite being a taller mast than that of others alongside Bessemer Road, I do not consider the installation would appear unduly conspicuous within the context of the existing telecommunications infrastructure present within the area. The colour finish of the mast and associated cabinets could be controlled by means of a suitably worded planning

condition to ensure the installation would be of an appropriate appearance for its location.

9. For these reasons, I conclude that the proposed development would not harm the character and appearance of the area. As such, the proposal would not materially conflict with Policies D1, D2 and R21 of the District Plan and Supplementary Design Guidance (SDG) 2005. These policies and SDG seek, amongst other matters, development to respect and relate to the character and context of the area in which it is proposed and not to harm the appearance of the street scene or appear visually intrusive.

Living conditions

10. I have been directed to a residential development that is currently under construction adjacent to the proposed mast installation site. I have been provided with the details of that scheme. The details indicate that three 3-storey blocks are to be constructed parallel to Bessemer Road. One of the residential blocks would be within close proximity of the appeal site. Windows that serve habitable living accommodation would face toward the appeal site. The mast and ancillary equipment would be visible in the outlook of the nearest residential units and would be visible in oblique outlook from residential units close by. However, as I have noted above, the mast pole is relatively slimline, and the cabinets would be of a low height. I do not consider that the installation would be so unduly dominant to have a significantly adverse effect upon the outlook of future occupiers.
11. For these reasons, I conclude that the proposed development would not significantly harm the living conditions of future adjoining occupiers. As such, the proposal would not materially conflict with Policy D1 of the District Plan and SDG that require, amongst other matters, the standard of design in all new development to be of a high quality.

The need to site the installation in the location proposed having regard to the potential availability of alternative sites

12. Policy 21 Criterion (i) of the District Plan requires the applicant to demonstrate that there are technical reasons which prevent the installation of the apparatus on existing masts, buildings or other structures. Paragraph 115 Part c) of the Framework essentially reflects this requirement. The appellant has provided information within the Appeal Statement explaining the site selection process including discounted sites and the technical requirements required to maintain the existing network coverage. On the evidence provided the Council accepts that the new antennas cannot be erected on an existing building, mast or other structure and confirms that this information satisfies Part c). I see no substantive reason that would lead me to come to a different view on this matter.

Planning Balance

13. The Framework places emphasis upon high quality and reliable communications infrastructure being essential for economic growth and social well-being and that planning decisions should support the expansion of electronic communications networks, including next generation mobile technology, such as 5G and full fibre broadband connections.

14. The proposal would facilitate two network organisations to pool their network infrastructure. 5G would offer download speed far in excess of what can be achieved today not just to mobile devices but to broadband connectivity and 'Internet of Things' services. I acknowledge that Government and other publications support the provision of 5G recognising that this would improve economic growth and social inclusion with the aim of creating world-class connectivity. This proposal would prove a 5G mobile broadband service in a current cell gap area. This carries significant weight in favour of the proposal.
15. The Framework also sets out that the outcomes of consultations with organisations with an interest in the proposed development is necessary evidence, as part of the planning decision making process, to justify the proposed development. The consultation process as required by the Framework and development plan policy has not been undertaken. Therefore, those organisation with a potential interest in the proposal have been precluded from the planning decision-making process. This carries substantial weight against the proposal.
16. In accordance with the requirements of s38(6) of the Planning and Compulsory Purchase Act (2004), the appeal must be determined in accordance with the development plan unless material considerations indicate otherwise. Although I have found in favour of the proposal in respect of main issues b), c) and d), the conflict with the development plan and the Framework with regard to main issue a) is a substantial and overriding factor. Consequently, the material considerations in this case, do not indicate that the application should be determined otherwise than in accordance with the development plan.

Conclusions

17. For the reasons given, I conclude that the appeal should be dismissed.

Nicola Davies
INSPECTOR